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8 Attorneys for Plaintiff

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11

12 CHRIS BICKLEY, an individual,  
13 Plaintiff,

14 vs.

15 CENTURYLINK  
16 COMMUNICATIONS, LLC, a  
Delaware limited liability company,  
17 and DOES 1 to 10, inclusive,

18 Defendants.  
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Case No. 15-cv-01014 JGB (AS)

Honorable Jesus G. Bernal  
Courtroom 1 (Riverside)

**DECLARATION OF DAVID W.  
AFFELD IN SUPPORT OF MOTION  
FOR AWARD OF ATTORNEYS'  
FEES**

Date: July 11, 2016  
Time: 9:00 a.m.  
Courtroom: 1 (Riverside)

**DECLARATION OF DAVID W. AFFELD**

I, David W. Affeld, declare as follows:

1. I am a lawyer licensed to practice before all state and federal courts in the State of California, the Ninth Circuit Court of Appeals, and the United States Supreme Court. I am a partner with the firm of Affeld Grivakes Zucker LLP. Except where specified otherwise, I am personally familiar with the matters stated herein, and if called upon to testify concerning such matters, I could and would testify accordingly.

2. I submit this Declaration in support of the Application for Attorney's Fees submitted by Plaintiff.

**Familiarity with David A. Mallen**

3. I have known David A. Mallen for more than 20 years. I have jointly represented clients in employment matters with Mr. Mallen on many occasions, both on behalf of plaintiffs and on behalf of defendants, in both individual actions and in class actions. We have tried or arbitrated a number of cases together. We have also litigated dozens of other cases that were resolved before trial or arbitration.

4. Throughout the 20 years I have known Mr. Mallen, I have seen him consistently display a sophisticated and high-level understanding of all aspects of employment law, under both California and Federal law. As described more fully below, I have significant experience in employment law. When I have a question about an employment case I am handling, Mr. Mallen is the person I call as a matter of first resort. I regard him as an expert in the field.

**Personal Background**

5. My educational background is as follows: In 1982, I obtained a B.S. in physics from U.C.L.A. I received a J.D. from Cornell Law School in 1985, where I was an editor of the International Law Review.

6. I have been practicing law for nearly 30 years. Much of my practice has involved complex business disputes, employment law, and insurance coverage litigation. For 10 years I practiced in the business litigation departments of major law firms, including the antitrust and securities litigation groups of Brobeck, Phlegler & Harrison and Shearman & Sterling.

7. In 1996 I opened a boutique litigation practice. My practice since then has included securities litigation, both the defense of class actions and the prosecution of claims on behalf of investment funds; intellectual property litigation, including patent, copyright, and trademark infringement matters; employment litigation, on behalf of both employers and employees, regarding both individual and class actions; and insurance litigation, regarding coverage and insurance bad faith claims.

8. I have been recognized by my peers as a SuperLawyer in business litigation from 2009 through 2016, a distinction that the SuperLawyer publication states is accorded to only 5% of attorneys in the practice area each year.

9. I have tried or arbitrated approximately three dozen cases before federal and state courts or arbitral tribunals. I lost one trial in 2004, one arbitration in 2006, and one trial in 2014. My clients prevailed in all the other matters that went to adjudication.

10. I have been the lead lawyer on numerous appeals in the Ninth Circuit, California Courts of Appeal, and the California and Nevada Supreme Courts. I have obtained a number of reported decisions in the field of employment law, including *Prince v. CLS Transportation, Inc.*, 118 Cal. App. 4<sup>th</sup> 1320 (2004) (on behalf of plaintiffs in a wage and hour class action, obtained reversal of a trial court's order dismissing class allegations), and *Villacorta v. Cemex Cement, Inc.*, 221 Cal. App. 4<sup>th</sup> 1425 (2013) (when a wrongfully terminated employee is forced to take non-comparable subsequent

1 employment, the employer cannot use the employee's wages from his  
2 subsequent employment in mitigation of the employee's lost wages).

### 3 Hourly Rates

4 11. I am familiar with the billing rates in the Southern California legal  
5 community. Over the years, I have made many applications for an award of  
6 legal fees after a successful trial or arbitration. In the process, I have  
7 consulted with colleagues at other firms, including major law firms and  
8 smaller litigation specialty practices, regarding prevailing hourly rates for  
9 lawyers in the Southern California legal community.

10 12. I am also a member of a roundtable group of managing partners of  
11 small and mid-sized law firms in the Los Angeles legal community. In that  
12 context, I have conferred with many other managing partners of law firms  
13 regarding prevailing hourly fee rates for lawyers of all ranges of experience,  
14 practice area, and ability.

15 13. In the course of my career, I have represented many clients in  
16 employment litigation on a contingency fee basis. I have frequently joint-  
17 ventured such cases with other lawyers, including Mr. Mallen.

18 14. Plaintiff's attorneys who work on a contingent basis run an  
19 extreme risk with every case they litigate. Unlike their defense counterparts,  
20 Plaintiff's attorneys operating on contingency have no certainty of ever getting  
21 paid on any particular case.

22 15. Typically, employment litigation involves greater risk than other  
23 contingency fee-based cases such as personal injury litigation. Liability is  
24 often difficult to establish, whereas in personal injury cases liability frequently  
25 is clear. Substantially more work is needed over the life of an employment  
26 litigation matter to prepare it for trial. Employment litigation is usually  
27 complex, factually and legally. Defense counsel can be extremely  
28 sophisticated and find imaginative obstacles to present. These cases require

1 extensive discovery, depositions, and the retention of costly experts.

2 16. A Plaintiff's employment attorney frequently takes the additional  
3 risk of advancing costs on behalf of a client who cannot afford to pay them.  
4 Most plaintiffs' employment cases involve people who are unemployed, and  
5 are therefore financially devastated. They are unable to pay the significant  
6 costs associated with extensive litigation. The Plaintiff's employment attorney,  
7 therefore, frequently advances the costs out of his own pocket, increasing the  
8 risk beyond non-payment to an actual loss of his business's funds.

9 17. A billing rate of \$695 per hour is well within the range of  
10 customary rates for employment litigators with Mr. Mallen's level of skill and  
11 experience.

12 I declare under penalty of perjury under the laws of the United States of  
13 America that the foregoing is true and correct. Executed on this 8th day of  
14 June, 2016, at Los Angeles, California.

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16 /s/ David W. Affeld  
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